

## **Article 5**

### **Nonconformance**

#### **Section 501. Purpose**

The purpose of this Article is to regulate nonconforming lots, uses, and structures as defined in this Ordinance such that they can be reasonably developed, maintained or repaired, or changed to other less nonconforming or to conforming uses. When nonconforming uses fall into disuse, the intent of the Article is not to allow them to be re-established after a 12-month period of dormancy.

#### **Section 502. Nonconforming Lots**

##### **502-1. VACANT LOTS**

- 1) A nonconforming lot of record may be built upon provided that such lot shall be in separate ownership and not contiguous with any other lot in the same ownership, except as provided in paragraphs 502-1 (2) and 502-1 (3) below. (Amended 2/24/14)
- 2) If two or more vacant, contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendment, the lots shall be combined to the extent necessary to meet the dimensional standards, except where the contiguous lots front onto different streets or where the lots were legally created and recorded as part of an approved subdivision after March 22, 1972, the date of adoption of Saco's subdivision standards.
- 3) If two contiguous lots or parcels are in common ownership of record at the time of the adoption of this ordinance, Jan. 3, 1985, and either lot does not individually meet the dimensional requirements of this Ordinance, and provided that one lot is vacant or contains no principal structure and the other lot has a principal structure, the lots shall be combined into one lot of record. This shall apply to lots or parcels within all zoning districts in the City of Saco. This shall not apply to contiguous lots with frontage on different streets, or to lots legally created and recorded as part of an approved subdivision after March 22, 1972, the date of adoption of Saco's subdivision standards. (Amended 2/24/14)

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- (4) In the shoreland zone, two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on or before the effective date of the Shoreland provisions in this Ordinance shall be considered one lot. (Amended 2/24/14)

### 502-2. BUILT LOTS

- 1) A structure built on a lot prior to enactment of this Ordinance, which lot does not conform to lot area or lot frontage, may be repaired, maintained or improved, and may be enlarged in conformity with all dimensional requirements of this Ordinance, except lot area or lot frontage. If the proposed enlargement of the structure(s) cannot meet the dimensional requirements of this Ordinance a variance shall be required from the Board of Appeals.
- 2) If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption or amendment of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together, provided all state law and local ordinance requirements are complied with.

## Section 503. Nonconforming Uses

### 503-1. CONTINUANCE

The use of land, building or structure, lawful at the time of adoption of this Ordinance, may continue although such use does not conform to the provisions of this Ordinance.

### 503-2. RESUMPTION

Whenever a nonconforming use is superseded by a permitted use of a structure, or structure and land in combination, such structure or combination of land and structure shall thereafter conform to the provisions of this Ordinance and the nonconforming use may not thereafter be resumed.

This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period. (Amended 4/21/92)

### 503-3. DISCONTINUANCE

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A nonconforming use which is discontinued for a period of 12 months may not be resumed. The uses of the land, building or structure shall thereafter conform to the provisions of this Ordinance.

### 503-4. CHANGE OF NONCONFORMING USE

With the permission of the Planning Board an existing non-conforming use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate within the zoning district. The Planning Board shall make this determination after making a finding that the proposed use will be an improvement over the prior use based on the conditional use standards, Section 901-4 and Section 901-5 in shoreland areas. The Planning Board review and decision shall be governed by this Section and by Section 901. (Amended 11/6/89)

### 503-5. EXPANSION OF USE

- 1) A nonconforming use, including a nonconforming outdoor use of land, shall not be extended or expanded in area or function; provided, however that a nonconforming use may be extended throughout any part of a building or structure that was lawfully and manifestly designed or arranged for such use as of the effective date of this Ordinance.
- 2) Expansions of nonconforming uses are prohibited, except that nonconforming residential uses in the Resource Protection district may be expanded under the provisions of Section 504-1(3)e. (Amended 5/12/14)

### 503-6. EARTH REMOVAL

In the case of earth removal operations, the removal of earth may not be extended as a nonconforming use beyond the setback lines required in this Ordinance of the specific lot or parcel of land upon which such removal operations are in progress at the time at which such use has become nonconforming without securing a variance from the Board of Appeals. Adjacent parcels in the same or different ownerships shall not be eligible for exemption under the nonconforming use provisions unless earth removal operations have been in progress prior to the enactment of these provisions.

## **Section 504. Nonconforming Structures**

### 504-1. MAINTENANCE AND ENLARGEMENT (Amended 5/21/12)

- 1) A structure in existence as of the effective date of this Ordinance which does not meet the lot and yard requirements in Section 412 may be repaired, maintained

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and improved. It may be enlarged and/or accessory structures may be added to the site without a variance, provided that the enlargement or accessory structure itself meets the setback and height requirements of the district in which it is located and that the enlargement or accessory structure in combination with the existing structure does not exceed the prescribed maximum lot coverage.

Vertical enlargements of single-family or two-family dwellings that are nonconforming with regard to setbacks may be permitted if each of the following is met:

- a) The proposed use of the enlarged space is habitable residential space. No enlargements are permitted to expand space for a use that is nonconforming in the district.
  - b) The closest point of the new construction shall be no nearer to the property line than the closest point on the existing building upon which the vertical enlargement is proposed.
  - c) Enlargements constructed under these provisions shall not increase the height of the vertical face of the building more than ten (10) feet vertically within the setback. The height of the new eaves within the setback shall not exceed twenty-two (22) feet, when measured from original grade to the new eaves. Mansard and gambrel roofs, or similar roofs, and full dormers, or roof pitches greater than 12/12 are not permitted above the new eaves. Two single window dormers above the new eaves are permitted, but each may not exceed four feet in width.
  - d) The nonconforming portion of the existing structure on which the addition is built is no closer than six (6) feet from the side or rear property line upon which it encroaches. If the building code requires the new construction to be fire rated, the existing first floor construction in the setback shall be reconstructed to the same fire rated standard.
  - e) The closest point of the nonconforming portion of the existing structure on which the addition is built is no closer than (fifteen) 15 feet to the front property line.
  - f) All other relevant standards of the zoning ordinance not related to setbacks are met.
  - g) The standards of the Floodplain Development Ordinance, Chapter 106, must be met.
- 2) The following activities shall not constitute an enlargement or creation of a nonconforming structure, and may encroach into front, side or rear yard setbacks, without the need for a variance from the Board of Appeals, if any of the following

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conditions are present:

- a) the addition of an open patio with no structure elevated above ground level, and the addition is outside of the Mandatory Shoreland Zone;
- b) the addition of steps from the first floor to the ground level in any zone;
- c) the placing of a foundation below a nonconforming structure in any zone.

3) FURTHER LIMITATIONS IN SHORELAND ZONES (Amended 6/29/09; 2/24/14; 5/12/14)

Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming. Further limitations and exceptions in the Shoreland Zones:

- a. After January 1, 1989 if any portion of a structure is less than the required setback from a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 504-2 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- b. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 504-4. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with this section, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

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- d. A non-conforming structure in the RP zone may be added to or expanded as measured in floor area or volume by up to 30% upon issuance of a permit from the Code Enforcement Office, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) through (c) above.
- e. A non-conforming structure in the RP zone may be added to or expanded as measured in floor area or volume by up to 30% upon issuance of a permit from the Code Enforcement Office, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) through (c) above. (Amended 5/12/14)

#### 504-2. RECONSTRUCTION

Any non-conforming building or structure which is removed, damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with all dimensional requirements of this Ordinance to the greatest extent practical as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 504-1(3) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 504-4.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction or removal.

#### 504-2A. RECONSTRUCTION IN FLOODPLAINS (Amended 5/21/12)

Any building in existence prior to January 1, 2012, which is located in an area of special flood hazard and which is thereafter substantially improved, as defined in Chapter 106 of the Saco City Code, may be elevated pursuant to the standards of Chapter 106, and may be allowed to exceed the height limits of this ordinance without need for a variance from the Board of Appeals, as long as all of the following standards are met.

- a. If the building, prior to reconstruction, had a height of 30 feet or greater, as defined by this ordinance, the overall height of the reconstructed building may exceed the required height in the zone in which it is located without the need for a variance, but by no more than the distance that the lowest floor (including basement) is raised above its original elevation during reconstruction.
- b. If the building, prior to reconstruction, had a height of less than 30 feet, as defined by this ordinance, the building shall not be allowed to be reconstructed higher than the maximum height requirement, unless a variance is applied for and granted by the Board of Appeals.
- c. Any reconstructed building shall meet all of the requirements of the Department of Environmental Protection Sand Dune Act and Regulations, if it is located in a designated Dune Area.

#### 504-3. OFF STREET PARKING AND LOADING SPACES

- 1) A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, seats, or accommodations, unless off-street parking is provided for such enlargement or alteration itself sufficient to satisfy the requirement of this Ordinance.
- 2) A building which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Ordinance for the addition or enlargement.

#### 504-4. RELOCATION

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all

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setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established.

An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof. (Amended 4/21/92)

## **Section 505. Transfer of Ownership**



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Ownership of lots and structures which remain lawful but became nonconforming by the adoption or amendment of this Ordinance may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.